

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

United States of America

Criminal No. 21-cr-872 (MAS)

v.

Justin Ubry,

Defendant

Motion to Dismiss

DEFENDANT'S MOTION TO DISMISS COUNT TWO OF THE INDICTMENT

Defendant Justin Ubry, through counsel, moves to dismiss Count 2 of the indictment, charging Deprivation of Rights Under Color of Law, in violation of 18 U.S.C. § 242, based on Rule 12 of the Federal Rules of Civil Procedure.

GROUND S FOR RELIEF

1. On or about November 18, 2021, the Government returned a two-count indictment against Justin Ubry and codefendants Michael Delahanty and Matthew Przemieniecki.

2. In Count 2 - the sole count against Mr. Ubry - the Government accused Mr. Ubry of violating 18 U.S.C. § 242.

3. The Government alleged that Mr. Ubry,

while acting under color of law, unlawfully kicked snow in the face of Victim 1 during the arrest of Victim 1, thereby willfully depriving Victim 1 of the right, secured by and protected by the Constitution and laws of the United States, to be free from the use of unreasonable force by a law enforcement officer.

4. Neither the Constitution nor the laws of the United States protect citizens from having snow kicked in their faces.

5. The Government failed to allege an essential element of Section 242: the specific right that the defendant violated.

6. Therefore, Count Two of the indictment should be dismissed under Rule 12(b)(3)(B)(v) of the Rules of Criminal Procedure because the Government has failed to state an offense.

CONCLUSION

Mr. Ubry respectfully requests that this Court dismiss Count 2 from the indictment because the Government failed to state an offense.

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Dated: April 07, 2022

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ORDER

AND NOW, this ____ day of _____, 2022, upon consideration of Defendant's Motion to Dismiss Count 2 of the Indictment, it is hereby ORDERED that the Motion is GRANTED and Count 2 is DISMISSED.

Hon. Michael A. Shipp, U.S.D.J.